

1 BARRY J. PORTMAN  
Federal Public Defender  
2 COLLEEN MARTIN  
Assistant Federal Public Defender  
3 555 12<sup>th</sup> St. – Suite 650  
Oakland, CA 94607-3627  
4 Tel. 510-637-3500  
5 Counsel for Defendant OCHOA-GUTIERREZ  
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9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,	)	No. CR 08-00153 DLJ
12	)	SENTENCING MEMORANDUM
13 Plaintiff,	)	
14 v.	)	Date: August 1, 2008
15	)	Time: 10:00 a.m.
16 JOSE LUIS OCHOA-GUTIERREZ,	)	Courtroom: Honorable D. Lowell
17	)	Jensen
18 Defendant.	)	

19 INTRODUCTION

20 Jose Luis Ochoa-Gutierrez has pleaded guilty to one count of illegal reentry into the United  
21 States in violation of 8 U.S.C. § 1326. The parties have entered into a plea agreement pursuant to  
22 Federal Rule of Criminal Procedure 11(e)(1)(c). The parties agree that Mr. Ochoa falls within  
23 Criminal History Category IV. Pursuant to that agreement, Mr. Ochoa-Gutierrez respectfully asks  
24 that this Court sentence him to a term of 57 months. He further requests that this Court recommend  
25 to the Bureau of Prisons that he be designated to the federal institution at Lompoc, California, or to  
26

1 some other institution in California, so that he may remain close to his family.

## 2 DISCUSSION

3 Jose Ochoa was born in Michoacan, Mexico, to a poor but stable family. PSR at ¶¶ 36-37.  
4 When he was four years old, his family moved to the United States, and at some point in his  
5 childhood, Mr. Ochoa received a green card. PSR at ¶ 37. He grew up in Northern California and  
6 went to school locally. PSR at ¶¶ 36-37, 41. Except for his prior deportations, he has lived in the  
7 United States for the last 30 years.  
8

9 Mr. Ochoa has the continued love and support of his family. His brothers and sisters have  
10 submitted letters to the Court on behalf of his family. *See* Letter from Carlos Ochoa, Leticia Ochoa,  
11 and Sandra and Manuel Ochoa, attached as Exhibits A, B, and C. As his family explains, Mr. Ochoa  
12 returned to the United States after being deported to be with his family, and especially his ill mother.  
13 *See id.* However, Mr. Ochoa and his family all recognize that he may not return to the United States  
14 and that he must make his life in Mexico now. *See id.*, PSR at ¶ 10. Mr. Ochoa plans to use his  
15 fluency in English to get a job in Mexico. PSR at ¶ 37. His family is supportive of his efforts to  
16 establish himself in Mexico. *See* Exhibits A, B, and C.  
17

18 Mr. Ochoa has entered into a plea agreement pursuant to Federal Rule of Criminal Procedure  
19 11(c)(1)(C), with the parties agreeing that the adjusted offense level is 21 and agreeing that the  
20 appropriate sentence is at the low-end of the applicable guidelines. *See* Plea Agreement at ¶¶ 7-8.  
21

22 While the PSR indicates that Mr. Ochoa was “found in” the United States on January 31, 2006,  
23 on a date he was arrested by the Oakland Police Department, Mr. Ochoa agrees with the government  
24 that the appropriate “found in” date is February 23, 2008, when the Bureau of Immigration and  
25 Customs Enforcement discovered his presence in the United States. *See* Government’s Sentencing  
26

1 Memorandum at 2, n. 1. Mr. Ochoa joins in the government's objection to ¶ 7 of the PSR. Mr.  
2 Ochoa further agrees with government that the PSR overstates Mr. Ochoa's criminal history by 2  
3 points, based on its use of January 31, 2006, rather than February 23, 2008, as the date of the instant  
4 offense. *See* Government's Sentencing Memorandum at 2, n. 2; PSR at ¶ 32. Based on a February  
5 23, 2008, date as the date of the current offense, Mr. Ochoa has 7 rather than 9 criminal history  
6 points. However, this does not alter Mr. Ochoa's Criminal History Category, which the parties agree  
7 is Category IV. *See* Government's Sentencing Memorandum at 2, n. 2.

9 The low-end of an adjusted offense level of 21 at Criminal History Category IV is 57 months.  
10 The parties and the Probation Office all agree that a sentence of 57 months is appropriate. *See* PSR  
11 Sentencing Recommendation at 1.  
12

13 Mr. Ochoa therefore respectfully requests that this Court sentence him to a term of 57 months  
14 in prison.

15 Further, in order for Mr. Ochoa and his family to maintain their ties during his incarceration,  
16 Mr. Ochoa respectfully asks that this Court recommend to the Bureau of Prisons that he be  
17 incarcerated at FCI-Lompoc or some other institution in California.  
18

### 19 CONCLUSION

20 For the reasons stated above, Jose Ochoa-Gutierrez respectfully asks that this Court sentence  
21 him in accordance with the plea agreement to a term of 57 months in custody, and that the Court  
22 recommend that he serve his time at FCI-Lompoc or some other institution in California. He further  
23 asks that the PSR be amended to reflect that the date of the instant offense is February 23, 2008, and  
24 that he has 7 criminal history points.  
25  
26

Respectfully submitted,

Dated: July 28, 2008

/S/

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COLLEEN MARTIN

Attorney for Defendant Jose Luis Ochoa-Gutierrez

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# Exhibit A

June 5, 2008

Dear Judge Jensen,

My name is Carlos Ochoa, brother of Jose Ochoa who is going to be sentenced on August 1, 2008. I wanted to take the time to tell you a little about my brother. This will be his third time in the system, if he does time. My family and I feel guilty because we encouraged him to come back the past two times, but now we realize that we were wrong! We would rather see him free in Mexico than to have him have in the U.S.

Jose truly regrets the fact that he made a wrong decision by coming back to the U.S. He is never coming back which before he was always wanting to come back. My parents are planning to assist him by allowing him to live in their home in Mexico. We also have family out there that can help him. We all care a lot for him, and are hoping that you have a little compassion when sentencing him. Our Mother has experienced some medical issues.

I would like to thank you in advanced for your consideration in the above matter.

Sincerely,

Carlos Ochoa  
896 Lourence Dr  
Tracy, CA 95376  
(209) 481-7828

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# Exhibit B

# Ochoa Family

1222 Walnut Creek Dr.  
Newman Ca. 95360  
Phone (209) 862-1697

July 10, 2008

Honorable Judge Jensen,

*I am writing on behalf of my family: Bertha Ochoa (Mother), Jose L. Ochoa (Father), and Yvette Ochoa (Sister). My name is Leticia Ochoa I am the oldest sister of Jose Ochoa who is in jail. He was deported from this country to Mexico. He came back because life in Mexico is very hard for those who do not have a way of life there, yes we all agree that he broke the law by coming here illegally, and he knows that this would of not happened to him in the first place if he had stayed on the correct path our parents taught us. And we could not stop him from coming back. He also wanted to be here for one very important reason, my mother is sick, she suffered a heart attack and has other conditions, and he did not want her worrying about him anymore. We dare ask your Honor that he get the punishment of being deported to Mexico, and not to spend many years in jail this will be very hard for all of my family especially my mother. I thank you for taking a few minutes to read this letter.*

*Sincerely,*

*Leticia Ochoa*

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# Exhibit C

# Sandra & Manuel Ochoa

1826 Mimosa CT.  
Tracy, CA 95376  
Phone (209) 229-8255

July 11, 2008

The Honorable D. Lowell Jensen  
555 12<sup>th</sup> Street, Suite 650  
Oakland, CA 94607  
RE: Jose Ochoa ULL836

Dear Friend,

*We are writing you today to let you know that as Jose Ochoa's sister-in-law and as Jose's brother we support Jose Ochoa 110%. We would like to see him well and be able to see him at home with his family. Jose Ochoa is a good man and a hard-worker. Despite the problems that he is having we want to see him well and be able to help him on the right path. He was working for my husband before he was arrested as an ironworker. My husband and I live in Tracy, CA and we have three daughters, Itzel, age 10, Lali, age 2, and our littlest Elisa who is 1 years old.*

*I, Sandra Ochoa am a stay at home mom. I was the Executive Region assistant for a subsidiary at UPS known as UPS Professional Services for 4 years. I obtained my degree in Business Management from the University of Phoenix.*

*I, Manuel Ochoa (I am Jose's middle brother) am self-employed and recently obtained my contractors CA license a year ago and we are starting a business called Cali Reinforcing. The company specializes in post-tension rebar. I previously had a company called MCL Steel with a couple of partners and now I am doing it on my own.*

*We would like to take this opportunity to thank you and be able to support Jose any way we can. We will pray for Jose and hope that the decision you make will be the right one for Jose's future.*

Sincerely,

Sandra and Manuel Ochoa